IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 26045 of 2007(A)

OS.414/1992 of PRL.SUB COURT,IRINJALAKUDA

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PETITIONERS:

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1. HENRY BOWER, S/O.JOHN PATRIC BOWER, HOUSE NO.26, N.G.N.STREET, SIDHA PUDUR, COIMBATORE.

2. GEORGE BOWER,S/O.JOHN PATRIC BOWER, HOUSE NO.26, N.G.N.STREET, SIDHA PUDUR, COIMBATORE.

3. FREDERIC BOWER, S/O.JOHN PATRIC BOWER, HOUSE NO.26, N.G.N.STREET, SIDHA PUDUR, COIMBATORE.

4. SHERLY STEPHEN, 7, U NEHRU NAGAR, BEHING C.M.S. SCHOOL, GANAPATHY, COIMBATORE.

BY ADV. SRI.MURALI PURUSHOTHAMAN
SRI.DEEPU LAL MOHAN

RESPONDENTS:

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1. GRACY CHACKO, W/O.LATE ABRAHAM CHACKO, ERUTHIPATTU HOUSE, GANDHIGRAM DESOM, IRINJALAKUDA VILLAGE, THRISSUR.

2. ANNIE, D/O.LATE ABRAHAM CHACKO, ERUTHIPATTU HOUSE, GANDHIGRAM DESOM, IRINJALAKUDA VILLAGE, THRISSUR.

3. LISSY, D/O.LATE ABRAHAM CHACKO,
ERUTHIPATTU HOUSE, GANDHIGRAM DESOM,
IRINJALAKUDA VILLAGE, THRISSUR.

4. ABRAHAM @ BENNY, S/O.LATE ABRAHAM CHACKO
ERUTHIPATTU HOUSE, GANDHIGRAM DESOM,
IRINJALAKUDA VILLAGE, THRISSUR.

5. JOLLY, S/O.LATE ABRAHAM CHACKO
ERUTHIPATTU HOUSE, GANDHIGRAM DESOM,
IRINJALAKUDA VILLAGE, THRISSUR.

6. SHERLY, D/O.LATE ABRAHAM CHACKO
ERUTHIPATTU HOUSE, GANDHIGRAM DESOM,
IRINJALAKUDA VILLAGE, THRISSUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.26045 of 2007

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Dated this the 7th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P5 order passed by the Principal Subordinate Judge, Irinjalakuda in I.A.No.2727 of 2002 in O.S.No.424 of 1992. A brief reference to the facts are necessary for a proper appreciation of the case.

2. Original plaintiff, namely, Chacko, has filed a suit against the defendants for a declaration that document No.817 of 1989 is executed with intention to defeat or defraud the creditors and it is liable to be set aside invoking Section 53 of the T.P. Act and for realisation of the amount, etc. On the other hand, the defendants would contend that it is a valid document and it cannot be interfered with at all.

3. During the pendency of the case itself, Chacko dies and his legal representatives are impleaded as supplemental plaintiffs. Second plaintiff is the wife of the deceased Chacko.

She had raised a contention by virtue of an amendment application that the property belonged to Simon and during the life time of Simon, he had executed a Will in the year 1985 and the document relied on by the defendants is a creation by impersonation, fraud, etc. and therefore, the second plaintiff is having absolute title and right over the property and therefore wants the plaint to be amended by incorporating those pleadings. Learned counsel for the writ petitioner submits that the scope of amendment when a legal representative is impleaded, has to be confined only to the pleadings that are available to the original plaintiff. At the first blush it appears to be very persuasive argument. At the same time, it is the duty of the court while administering justice to avoid multiplicity of suits and proceedings and avoid unnecessary complications. Now the second plaintiff in one capacity or other is impleaded as a party to the suit. Suppose she is not raising the plea in this case, a situation may arise when arguing in another proceedings that she ought and might have raised this pleading in the case, because it has affected her rights. So, one cannot find fault with the second plaintiff for raising such contention in the amendment.

It is true that there is considerable deviation from the original prayer and necessarily so because she is altogether having a case of independent right over the property. The subject matter is the very same and everything depends upon the entitlement to the property either by the plaintiff or by the defendants. It is true that further pleadings are incorporated to contend for the position that the document is vitiated by impersonation, fraud, etc. Already, there is a prayer for a declaration and setting aside the document. Certainly, that is the cause of action which survives. Therefore, I feel that in order to avoid multiplicity of proceedings, it is only just and proper to allow the amendment application as has been done by the court below, at the same time, reserving the right of the defendants to raise the plea of impersonation and other grounds, which has necessarily to be tried by the court below.

With these observations, this Writ Petition is dismissed.

M.N.Krishnan,
Judge.

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